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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Richard Sanders, Janet Hagin, Dean Campbell, Ruth Ann Cantero, John R. Coleman, Joannie V. Ellis, Randall R. Ellis, Darryl Fife, Carol Fife, Steven D. Hollick, Jack Howard, Louise Howard, The Walter D. Howard Family Trust Dated July 27, 1993, Theresa Johnson, George Kressbach, Ester V. Livingston, Kenneth E. Miller, Karen K. Miller, Pamela Taylor, Jack E. Walburn, Florence M. Walburn, Carolyn Pence, Charles W. Walker, Debbie Walker, Linda Wright, Wanda Williams, Russell Williams, Carol Young and Steven Young,

Petitioners,

vs

First American Title Company, a corporation, Nancy Walsh and Julianne Sanchez, individuals,

Respondents.

On Petition for a Writ of Certiorari from the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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[Note: This is a companion Writ to the one the Supreme Court has accepted for issuance of a Writ number. *Sammye A. Richardson v First American Title Company et. al.* No, 035619]

QUESTIONS PRESENTED

Should certiorari be granted to decide whether there was a violation of Petitioners' constitutional rights:

A. when the Ninth Circuit Court of Appeals misapplied the compelling and exceptional circumstances test for a late filed opening brief.

B. when the civil damages trial below in California (brought by Petitioners and the Richardsons, after a successful state court criminal conviction of the individual Respondent, Nancy Walsh, in Arizona) was sabotaged by the false testimony of Respondents' witness, Peri Locklear, who was subsequently convicted in California of criminal fraud, theft, embezzlement and other crimes against the Richardsons and thereby against the Petitioners

C. when Respondents introduced false testimony in the trial court to obtain an improperly imposed injunction on real estate entities which were not in the jurisdiction of the court.

D. when an improperly imposed injunction caused the "taking of properties" without due process of law, where the court allowed Respondent First American Title Co. to obstruct the sales of properties, orchestrate fraudulent foreclosures, post improper default notices, encourage lenders to renege on their agreements to forebear, to refuse to accept payments, or when accepted to refuse to properly credit payments, among many other ancillary irregularities and illegalities.

E. where a cross-claim in the trial court was allowed when an arbitration clause in the document in question clearly prevented said cross-claim.

F. when the trial judge failed to voluntarily recuse himself or to disclose to the Petitioners and the Richardsons that the corporate Respondent First American Title Company had been his client.

G. when the trial court ignored the choice of law provisions in the Arizona documents and misapplied California law to the Arizona transactions where Arizona law clearly held that the misconduct of Respondent in failure to disclose fraud was a breach of fiduciary duty.

H. when the trial court ignored the bribes offered by the Respondents to all co-plaintiffs below, to file cross-claims or criminal charges against the Richardsons (who were Plaintiffs in the trial below).

I. when Julian Sanchez, (now a Respondent) took the bribe mentioned above, while she was a co-Plaintiff and filed a fraudulent cross-claim against the Richardsons below, after she had sat through valuable and confidential legal strategy sessions of the Petitioners and the Richardsons, and later took that information and various confidential documents to the Respondents.

LIST OF PARTIES

Petitioners are Richard Sanders, Janet Hagin, Dean Campbell, [illegible] Ann Cantero, John R. Coleman, Joannie V. Ellis, Randall R. Ellis, Darryl Fife, Carol Fife, Steven D. Hollick, Jack Howard, Louise Howard, The Walter D. Howard Family Trust Dated July 27, 1993, Theresa Johnson, George Kressbach, Ester V. Livingston, Kenneth E. Miller, Karen K. Miller, Pamela Taylor, Jack E. Walburn, Florence M. Walburn, Carolyn Pence, Charles W. Walker, Debbie Walker, Lida Wright, Wanda Williams, Russell Williams, Carol Young and Steven Young.

Respondents are First American Title Company, a corporation and defendant below, Nancy Walsh, an individual, (a defendant below) and Julianne Sanchez, former co-Plaintiff and then (cross-claimant below).

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that an additional Writ of Certiorari issue, on behalf of these Petitioners, to review the two judgments below. (Please note that this is a companion Writ to the one that has already been filed and accepted for issuance of a case number: ***Sammye A. Richardson v First American Title Company, et. al.*** No. 035619.) Documents referred to herein are already contained in the Appendices and Exhibits of the *Richardson* case, supra.

OPINIONS BELOW

Cases from federal courts:

1) The opinion of the United States Court of Appeals for the Ninth Circuit, unpublished, dated March 14, 2003. (See ***Richardson*** Appendix A).

2) The opinion of the United States District Court for the Northern District of California, Fresno Division, also unpublished, to the best of Petitioners' knowledge, dated March 5, 2002. (See ***Richardson*** Appendix A).

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction of this matter pursuant to 28 USC Sec, 1254(1) and because this is a Petition for Writ of Certiorari filed timely (within 90 days after the issuance of the appeals court decision). The Petitioners submit that the constitutional and statutory provisions involved are the 1st, 7th and 14th Amendments and Title 28 USC Sections 372(c) and 455.

STATEMENT OF THE CASE

Criminal Conduct Against the Home Rental Business

The Petitioners, herein are unconventional individual lenders. They had loaned sums totaling millions of dollars to the

Sammye A. Richardson, Michael A. Richardson and or their d/b/a MR Investments during the years (approximately 1994 to 1997) when they were developing real estate in Tucson, Arizona. Therefore injury to the Richardsons (caused by the Respondents herein and others) also resulted in injury to these Petitioners. The Richardsons were extremely successful home builders for over 20 years. They built and or rehabilitated homes which they rented to upscale executives, to middle income families, and to lower income families. They had run their business since 1975 in California with no significant problems, until they expanded their business to Tucson, Arizona in 1995. In Tucson, they were set up by Respondent Nancy Walsh, who was then employed by corporate Respondent, First American Title Company. Nancy Walsh was assisted by an outside accomplice, Richard Romero, in various schemes where funds were stolen from acquisition and building escrow accounts held by the Petitioners and the Richardsons. Walsh and Romero also stole real and personal property of the Petitioners and the Richardsons. Here it must be noted that First American Title Company benefited directly and indirectly from the criminal schemes of Walsh and Romero. They were benefiting by building a Lender Services Division with Nancy Walsh as the main income producer of that unit. Further this episode with the Richardsons was only the tip of the iceberg. First American has been fined repeatedly by the California and Arizona insurance commissioners for various acts of fraud and deceit practiced against the public. [See ***Richardsons,*** supra, Exhibits regarding the fines and penalties levied against First American after investigations had concluded they had engaged in wrong doing.]

In Tucson, the Richardsons had conventional and unconventional lenders that were involved in their home building and rental business. The conventional lenders were the banks and financial institutions who had loaned funds to the Richardsons who at that time had A-1 credit. The unconventional lenders were those like the Petitioners herein who had loaned funds to the Richardsons and been properly repaid in the past. The Petitioners herein were also some of the co-Plaintiffs in the federal district court (civil) trial below held in Fresno, California from 1999 to March 2002. Prior to this civil suit in California, indictments and criminal

charges in Tucson, Arizona were brought against Walsh and Romero, who were convicted and are now felons. In Tucson, Richard Romero filed bankruptcy and engaged in a series of schemes and maneuvers in an attempt to avoid returning real estate and personal property that he stole from the Petitioners and the Richardsons. One of the schemes included forming a company confusingly similar to MR Investments (Michael Richardsons d/b/a) to assist Romero in his embezzlement and fraud schemes.

Criminal Conduct to Sabotage The Federal Civil Litigation

Robert Werth and Julianne Sanchez. The Richardsons and Petitoners brought a civil action in California against First American Title Company and Nancy Walsh. The various charges in the counts below were: RICO violations, misrepresentation, fraud, negligence, conspiracy, breach of contract, and breach of fiduciary duty. The Richardsons hired a series of attorneys first, in California to assist them, but each time the attorneys would be intimidated by Respondent First American. First American is a multi-national corporation that would rather finance unethical and illegal conduct at the level of hundreds of thousands of dollars rather than pay millions in civil damages after a fair trial. The Petitioners and Richardsons attorneys were out maneuvered by a series of unethical tactics and schemes which made the Richardsons wonder how the other side seemed to be privy to their confidential information and strategy. One of the most blatant schemes perpetrated by the First American and its attorneys was that a written bribe was offered to any co-Plaintiff who would file a criminal action or civil cross claim against the Richardsons. Attorney Robert Werth wrote the letter on his law firm stationary. When he was found out, he vanished. Without any proof the trial judge in his lower court opinion (See ***Richardson*** Appendix A, Decision dated March 5, 2002) protectively insinuated that Werth was deceased. He did not this without reference to a local obituary, a funeral notice or a death certificate. The Richardsons have found that Robert Werth is alive and well. He is working in Fresno, California and maintaining a very low profile.

No co-Plaintiff below took the bribe to file criminal charges against the Richardsons. No co-Plaintiff below (except

Julianne Sanchez), took the bribe to file a cross-claim. However, she did not reveal herself as a cross-claimant until later after she had taken valuable plans, strategies, documents and evidence from the Petitioners and the Richardsons and given them to the Respondents. Julian Sanchez became a cross-claimant against the Richardsons under an Arizona real estate transaction where the Richardsons had already paid her. The cross-claim was allowed by the court even though, (on the face of the document that was the basis of her bogus cross-claim there was a provision indicating that), arbitration was the only remedy allowed in the event of a dispute. The trial court ignored the arbitration clause as well as the written bribes when they were both brought to the court's attention. (See ***Richardsons*** Exhibits- Bribery Package containing letter of Robert Werth, the Loan Agreement [for a loan to be given by First American to any bribe taker], the letter of the Underwoods and Chambers families demanding that they be removed from any cross-claim filed by Robert Werth against the Richardsons, and a copy of the escrow documents containing the arbitration clause.) However, even after Julianne Sanchez was no longer privy to the confidential information and plans of the Richardsons, the Respondents still seemed to obtain and utilize confidential materials, documents and evidence. These materials where then tampered with and altered by Respondents in ways that hampered the Richardsons' case.

Peri Locklear. It was found that now the information being given to Respondents was through the Richardsons' independent contractor, Peri Locklear. She had access to all of the Richardson's evidence, material, information, documents, files, computer discs etc. She did all the typing for the Richardsons in their home rental business and later for some of the documents prepared for the trial. In addition, she did court filings, she ran errands, she collected rents, she paid bills and she was supposed to make certain mortgage payments had been made. Items that were important to the Richardson's case began to vanish. This was coupled with the Richardsons' financial difficulties that were the result of Locklear's criminal actions i.e. embezzlement and theft from the Richardsons. She actually stole rents and income from the Richardsons. She was convicted in a state criminal court for said acts, several months after the Richardsons lost their federal trial.

Peri Locklear, had been involved with a scheme to help the Respondents in three ways. One, she stole rental income form the Richardsons, altered rental contracts, and did other mischief that wrecked the Richardsons financially. Second, she stole valuable evidence, documents and computer discs that were vital to the Richardson's case which she later admitted in her criminal trial, and gave those documents, evidence and material to the Respondents. The damage (from these first two) was so effective that the Richardsons found themselves in pro per from the middle of the discovery period of the trial through the end of federal litigation, because they did not have further funds to pay lawyers. Third, as soon as Peri Locklear was fired by the Richardsons, she appeared as Respondents' star witness and gave false testimony against the Richardsons which was outcome determinative. The federal trial court decision was March of 5, 2002. Peri Locklear was convicted six (6) months later for her criminal conduct against the Richardsons. That was a state court guilty verdict in early September, 2002. She began to serve time during the middle of September and is still incarcerated at this writing.

Improperly Imposed Injunction

The financial difficulties imposed by Locklear's theft and embezzlement was supplemented by the financial hardship of an improperly imposed injunction that the trial court entered after false testimony was introduced related to the cross-claim of Julianne Sanchez. The injunction imposed by the trial court was too expansive and incorporated properties that were not owned by the Richardsons, but were owned by their two daughters and their Arizona limited liability company, Rock of Gibraltor. This injunction was used to prevent the Richardsons and other non parties from selling any of their properties, from refinancing their assets, or from doing anything to continue to produce the needed income to finance their litigation.

Failure to Disclose Misconduct in Arizona

It was argued at trial that Nancy Walsh had a duty to disclose the misconduct of herself and Richard Romero in Arizona

for which they were criminally convicted. The crimes related to the real estate transactions which were the subject of the civil damages suit all took place in Arizona. All documents related to those transactions clearly stated that Arizona law applied. Despite this fact, the federal trial court in California allowed the Respondents to argue California law during a post trial motion for a directed verdict on the one count upon which the jury was undecided, breach of fiduciary duty. (On all other counts the jury decided against the Richardsons and the Petitioners herein, but decided in favor of Julianne Sanchez' cross-claim.) The post trial motion did not apply Arizona law to the Arizona transaction involving the alleged breach of duty. The discussion was only upon California law, which was not applicable to the Arizona transactions. On this basis the trial court ignored the jury decision and ruled in favor of the Respondent First American on the issue of breach of duty, despite the hung jury on the question.

Failure to Disclose Prior Relationship

During the appeal process to the Ninth Circuit the Richardsons found that Respondent First American Title Company had been the client of Judge Oliver Wanger during his years as an attorney. At no time during the trial did the court disclose that prior relationship or did the judge recuse himself due to that relationship. See ***Richardsons*** Exhibits – (His bio used for his Congressional confirmation [years ago] stated that First American had been his client. His July 16, 2003 post trial order denies they were a client.)

Extraordinary and Compelling Circumstances Test

The Richardsons appealed this case to the Ninth Circuit and focused on the felony conviction of Respondent First American's star witness, Peri Locklear, as their lead argument in the brief. The trial transcript of the state court criminal conviction had not been received by the Richardsons by the time the opening brief was due. A request was made to file the brief after the transcript had been received. The Ninth Circuit denied this request and stated (after submission of various documents by the Richardsons to make their argument), that they had not shown compelling and exceptional

circumstances. This was, in the Richardsons' view, a misapplication of the test since the attorney they had for the appeal had to travel between Illinois and California to represent them. Additionally, counsel was overloaded with their extraordinary bankruptcy case that he had been assisting with, as well as the other exceptional demands of the other cases in his practice. Also, at that time a life threatening crisis arose in his practice where a US citizen in Indiana had a pregnant wife in Yemen, whom the attorney was assisting in getting out of Yemen. This was a great difficulty given the incidents of terrorism that had occurred in that country against American interests.

REASONS FOR GRANTING THE WRIT

A. The Ninth Circuit Misapplied the Extraordinary and Compelling Circumstances Test.

The Ninth Circuit's Rule 31-2.2 allows the court to grant an extension of time to file an opening brief if the counsel can show "extraordinary and compelling circumstances." These circumstances have been found when the untimely brief was a result of circumstances effectively beyond the control of counsel. **See US v Edwards** 366 F2d 853 (2d Cir. 1966); see also **Matute v Procast Way,** 928 F2d 627, 630-631 (3rd Cir. 1991). In fact, this "extraordinary and compelling" provision was written in permissive, rather than absolute terms, in order to allow courts the discretion to review appeals on a case by case basis to determine what is equitable in the given circumstances. See **King v Laborers Intl Union of North American,** 443 F2d 273 (6th Cir 1971). The determination made as to whether these circumstances exist has been interpreted with great discretion quoting reasons that were similar to the ones in this case. In **Marcaida v Roscoe** 569 F2d 828, 830 (5th Cir. 1978) the personal and professional circumstances of counsel were considered. The court allowed the appeal despite the late filing, in consideration of counsel's citing his ill health, the holiday season, family considerations, and an extremely heavy caseload that fell during the briefing period. See **King,**(supra citing among other things lack of prejudice to the other party.); See also **Christopher W. v Portsmouth School**

Comm. 877 F2d 11089 (1st Cir 1989) (the appeals court considered and imposed lesser sanctions for failure to file timely.}

Counsel in this case had just as compelling reasons if not more so than those announced in the above cases. Specifically, counsel at the time of the appeal was based in Northwest Indiana and handling matters in Washington, D.C. related to immigration and employment discrimination. He was further handling matters in Illinois (where he is licensed) related to a person wrongfully convicted and incarcerated for a dozen years, found innocent by DNA and then suing the wrongdoers responsible for his illegal and bad faith conviction. Finally, there were many ancillary matters related to the district court case from which this appeal came and an extraordinary bankruptcy matter caused by the federal case, which counsel was responsible for in assisting the Richardsons. As a result of the embezzlement by Peri Lockler and the improperly imposed injunction of Judge Wanger, the Richardsons were unable to finance assistance for this counsel or to pay his expenses, which further contributed to his inability to meet the filing deadlines. This was the plan of Respondents all along - to cripple the Richardsons financially and then bury the Richardsons and their counsel with paperwork and motions, all in bad faith, during the appeal process.

The Richardson's counsel also had to have the criminal transcripts of the Peri Locklear state court conviction before filing the opening brief. The Richardsons and the present Petitioners could have been sanctioned for making arguments and allegations in the opening brief that were not supported by transcripts. These transcripts serve as the proof for one of the most important issues on appeal, the collusion of the Respondents in a criminal conspiracy with the convicted felon Peri Locklear to sabotage the Richardsons' and the Petitioners' case at trial through theft of income and theft of documents, computer discs, evidence and material vital to their claims against Respondent First American , Nancy Walsh and cross-claimant, Julianne Sanchez.

Given the discretion allowed in other circuits in implementing the extraordinary and compelling circumstances test and comparing the facts of this case with the cases in those circuits, it appears that the Ninth Circuit has been too rigid here. The consequence of which has been that a meritorious case has

been denied a hearing on appeal, despite justifiable reasons for the delay in filing the opening brief. Even the proceeding related to having the Ninth Circuit hear the reasons for the delay is brought into question. Evidence and materials of Petitioners were removed from the docketing record and had been "lost" for several weeks. To this day the Ninth Circuit cannot prove that all the evidence given to the panel of judges was reviewed by them and efforts of the Petitioner to determine this were rebuffed by one of the docketing clerks. This particular docketing clerk was the one to whom the paper trail had led. He insisted that he did not know why the documents disappeared for those weeks when the panel was to review the arguments about the late filed opening brief.

Counsel here was physically and mentally overworked, exhausted from traveling back and forth across the country before and during the briefing period, had family obligations, and legitimately needed the criminal trial transcript of Peri Locklear's felony conviction (which revealed all the criminal conduct that she engaged in to help Respondent First American financially destroy the Richardsons and sabotage their civil damages case against First American and Nancy Walsh). The transcript also showed how her perjured testimony prejudiced the jury and assisted the bogus cross-claim of Julianne Sanchez. The stated personal and professional circumstances, including not having Peri's transcript, should have induced the Ninth Circuit to allow the filing of the late brief and choose a lesser sanction than the draconian measure of refusing to give the legitimate appeal a hearing.

By failing to allow the case to be heard, the Petitioners have been deprived of their property without due process of law. This is a clear constitutional deprivation. They have ownership rights in a large number of the properties that have been illegally foreclosed upon and taken by various lenders working with Respondent, First American to destroy the Richardsons. First American has assisted them in gaining windfall profits with fraudulent and illegal foreclosures orchestrated by First American. The Petitioners (and the Richardsons) were denied an opportunity to show the criminal schemes and misconduct that have been used to damage them (the Petitioners and the Richardsons). This prevented the Petitioners and the Richardson from having a fair

hearing on their appeal. This denied them their constitutional right to a fair hearing before the Ninth Circuit Court of Appeals. For the foregoing reasons this Honorable Court should reverse the Ninth Circuit decision to dismiss the appeal.

B. The Sabotage of the Civil Case by Peri Locklear Unconstitutionally Deprived Petitioners of a Fair Triak and Deprived Petitioners of Their Property Without Due Process of Law.

The criminal actions of Peri Locklear adversely effected the civil damages case. By so doing the tremendous damages suffered by the Petitioners and the Richardsons (in the millions of dollars) were made unrecoverable due to their never having a fair chance at trial to prove their case. Peri Locklear, admitted in her criminal case in state court, that she stole rental checks from the Richardsons' tenants, she altered rent contracts and sabotaged rental prospects whenever she could. Further, she admitted in the criminal trial that she stole confidential and privileged documents, information, evidence and computer discs in order to give those items to Respondents First American, Nancy Walsh and Julianne Sanchez during the federal district court trial below. She was in a unique position to do so because she was working as an independent contractor for the Richardsons, had access to all their confidential materials and information and was the only one using the computer. At that time the Richardsons were not skilled on the computer. After she was found out, by the Richardsons, and her employment with them was terminated, she appeared in the federal district court as the star witness of First American , Walsh, and Sanchez. She was armed with confidential and privileged documents of the Richardsons at that time, which she and Julianne Sanchez had altered and tampered with in order to commit fraud on the court in her effort to assist the Respondents. (See ***Richardsons*** Exhibits – Peri Locklear's Criminal Trial Transcript)

The millions in damages was initiated by the convicted felons Nancy Walsh and Richard Romero in Tucson, Arizona. The criminal case there was won with a much higher standard of proof, "beyond a reasonable doubt." The civil damages trial in Fresno, California had a lower standard "by a preponderance of the

evidence" which means a simple 51% to 49% standard. The Arizona criminal conduct against the Petitioners and the Richardsons initiated the millions of dollars in damages, but the subsequent criminal conduct by Peri Locklear during the federal trial below prevented the recovery of those damages in the civil case in California. This criminal misconduct adversely effected the Petitioners and the Richardsons by denying them the right to a fair trial in violation of their 14th Amendment rights. Further this criminal misconduct adversely effected the Petitioners and the Richardsons by depriving them of their property without due process of law in violation of their 7th Amendment rights under the Constitution. See US Constitution Amendments VII and XIV. See also ***Withrow v Larkin,*** 421 US 35 (recognizing that the right to a fair trial in a fair tribunal is a basic requirement of due process.)

C. The Introduction of False Testimony to Obtain an Improperly Imposed Injunction Deprived Petitioners, the Richardsons and Innocent Non-Parties to the Suit of their Constitutional Right to a Fair Trial and Denied Them Their Property Without Due Process of Law.

The Respondents introduced false testimony to obtain an improperly imposed injunction on properties of the Richardsons (which contained the multi-million dollars in loans of the Petitioners), on properties of the children of the Richardsons (which had nothing to do with this litigation), and on properties of Rock of Gibraltor, the Arizona Limited Liability Company owned by the Richardsons and their two children. Rock of Gibraltor also had nothing to do with this litigation and was not a party. [See ***Richardsons*** Exhibits – Listing the many properties that were not involved in the litigation but had injunctions on them non-the-less] See ***Data General Corp v Southwest Research Institute,*** 1988 US Dist LEXIS 4832 (1988) (holds that a lack of personal jurisdiction over a party is grounds for denial of an injunction against that party). Placing the injunction on the properties of the non-parties was judicial error resulting in consequent constitutional violations to the property holders. The children owned income producing properties and the Arizona LLC was an entity that was income producing with a tremendous monthly positive cash flow which would have remained so if Peri Locklear and the improperly

imposed injunction had not been used by the Respondents to financially destroy the Richardsons and thereby the multi-millions of dollars in loans given by the Petitioners. Again, the violation here is similar to the one in Item B, above, in that there are two constitutional deprivations: first, a denial of the Petitioners' and the Richardsons' right to a fair trial and second, the taking of their property without due process of law. See U.S. Constitution Amendments VII and XIV; see also ***Withrow*** cited supra in Item B.

D. By the Respondents Using the Improperly Imposed Injunction to Engage in Further Misconduct There was Further Constitutional Deprivation Suffered by the Petitioners and the Richardsons.

The process of constitutional deprivation continued with the misuse of the improperly imposed injunction. The initial improperly imposed injunction was issued on or about January 15, 2001 by the trial court. During an 11 month period the injunction was used to effectively prevent the Petitioners and the Richardsons from sales of and the refinancing of homes and even empty lots that could have been used to further finance their litigation. With the additional sabotage of Peri Locklear stealing rental income for many months to help the Respondents by financially destroying the Richardsons, they were effectively placed in a pincer operation. The rental income from their properties was being stolen on the one hand and their ability to refinance and sell properties was being prevented on the other hand. In addition, the Respondents started issuing illegal notices of default and encouraging tenants not to pay their rents. This was to further destroy the Richardsons financially and prevent them effectively from funding their litigation against the Respondent. Again this was a constitutional deprivation under the 7th and 14th Amendments. See ***Withrow*** cited supra. The Petitioners and the Richardsons never had a chance to prove their case, based on the criminal misconduct of Peri Locklear in collusion with Respondent First American during the civil trial in federal court. Peri Locklear helped to destroy the Richardsons financially by stealing their rental income and preventing them from funding the litigation. She helped destroy their civil case by giving false testimony to the jury. Before she ever testified, however, during discovery she was stealing

confidential and privileged documents, evidence, computer discs and other vital materials and information and giving it to the Respondents to misconstrue and use to attack the Richardsons and thereby harm the Petitioners case against the Respondents.

This was an unconstitutional deprivation of their property rights without due process of law. There was no fair and lawful hearing wherein these issues were litigated. If they had been litigated properly without Peri Locker's criminal misconduct, the Petitioners and the Richardsons would have been able to successfully prove their case in civil court in California at a lower burden of proof as they had been able to do in criminal court in Arizona with a much higher burden of proof.

E. Allowing the Cross-Claim of Julianne Sanchez was Judicial Error and Further Caused Violations of the Petitioners' and Richardsons' 7th and 14th Amendment Rights.

The cross-claim of Julianne Sanchez was brought on the basis of a bribe by Attorney Robert Werth. Respondent First American made the offer to all the Petitioners who were co-Plaintiffs below. In fact, Robert Werth had even gone so far as to file a cross-claim on behalf of other co-Plaintiffs, the Underwoods and Chambers who disavowed this action, made Robert Werth dismiss the action and reported the same to the court. It was ignored by Judge Wanger. Julianne Sanchez was the only one to take the bribe offered by Robert Werth. Further, Robet Werth hid himself after his activities were exposed to the court. He left the law firm and took a menial job, with a very low profile in Fresno, County government. Further, the very document upon which her cross-claim was based had a clear and unambiguous arbitration clause that required any dispute to be settled by arbitration and specifically prohibited legal action as a first resort.

In addition, the Richardsons, who were in pro se, were denied the opportunity to introduce paid checks and other evidence to prove that the money allegedly owed to Julianne Sanchez had been paid. By allowing the improper cross-claim the entire focus of the litigation became whether the Richardsons owed Julianne Sanchez any money rather than the criminal misconduct in Tucson

of Respondents Nancy Walsh, and the civil liability of Respondent First American for her criminal misconduct in Tucson. This again caused constitutional deprivation under the 7th and 14th Amendments by denying the Petitioners and the Richardsons their right to a fair trial and by depriving them of property without due process of law. The cross-claim is what inspired the improperly imposed injunction on properties that had nothing to do with the litigation.

F. There was Constitutional Deprivation When the Trial Judge Did not Disclose his Prior Close Connection to Respondent First American or Did not Voluntarily Recuse himself.

During the appeal to the Ninth Circuit, the Petitioners discovered that Respondent First American Title Co. had been a client of the federal district court judge below, Judge Oliver Wanger, during his years as a lawyer. This point was never disclosed prior, during or subsequent to the trial below. Sammye Richardson uncovered it and shared it with the Petitioners. In ***Withrow***, 421 US at 46 and 47, the Supreme Court stated that "our system of law has always endeavored to prevent even the probability of unfairness" with respect to a biased decision maker. Furthermore, this Court has previously stated that officers acting specifically in a judicial capacity are disqualified by their interest in the controversy to be decided. ***Tumey v. Ohio*** 273 US 510 (1927) Although ***Tumey*** dealt with a pecuniary interest, other interests have also been given weight when discussing a judicial officers potential bias. See 28 USC Sec. 455; see Withrow, 421 US at 47.

The probability of unfairness and bias exists in the instant case in which the trial judge, unbeknownst to the Petitioners and the Richardsons, had previously been outside counsel for the Respondent First American, when he was a partner at a leading Fresno law firm, which maintains a high level of political power in that jurisdiction. As a result, the Petitioners and the Richardsons were victimized in a prejudicial trial at the hands of a biased judge, whose imposition of an improper injunction and whose allowance of an improper cross-claim contributed directly to the present

bankruptcy of the Richardsons and the loss of the underlying legal action at trial. That loss at trial and the bankruptcy of the Richardsons directly and adversely effected the Petitioners herein.

The trial judge should have disqualified himself pursuant to 28 USC Sec. 455 as his "impartiality might reasonably be questioned." At the very least the trial judge should have notified the Petitioners and the Richardsons of his potential impartiality and his previous connection to Respondent First American prior to his trying the action below. See ***Dyas v Lockhart***, 705 F2d 993 (8th Cir. 1983) (where it was found relevant whether the defendant knew the judge had offered to recuse himself from presiding over a case in which the judge was related to the prosecuting attorney.) Therefore, given the possibility of bias, unfairness and prejudice on the part of the trial judge he should have either recused himself voluntarily or at the very least informed the Petitioners and the Richardsons of his previous close connection to Respondent First American. Since he failed to disclose the prior relationship, the following factors become evidence of his obvious bias: 1) the issuance of the improperly imposed injunction, 2) the allowance of the Juliann Sanchez cross-claim despite the arbitration clause, 3) his allowing California law to be misapplied to Arizona transactions where the documents state that Arizona law applies, 4) his intemperate and mean spirited remarks on the record to Mrs. Sammye Richardson, and 5) other apparent judicial errors below. All of these factors bring into question his capacity for fairness and unbiased behavior during the trial.

G. There were Constitutional Depravations when the Trial Court Usurped the Jury's Role and Allowed Respondent's Post Trial Motion to Apply the Wrong Law to Obtain a Judgment in Their Favor on the Breach of Fiduciary Duty Issue.

There was a hung jury on the issue of the breach of fiduciary duty count. The jury could not decide whether the breach of fiduciary duty had taken place. The Petitioners and the Richardsons below argued that the failure of Nancy Walsh or her bosses to disclose the misconduct of herself and her criminal accomplice was a breach of fiduciary duty to the Petitioners and

the Richardsons. When the Richardsons made the upper management of Respondent First American aware of the misconduct of Nancy Walsh and Richard Romero in the Tucson transactions in 1995 and 1996 the management did not investigate, instead they stonewalled the Richardsons continuously for almost a year and continued to protect Walsh and Romero from the accusations of the Richardsons. It was not until the Attorney General of Arizona launched his investigation and his indictments did Respondent dismiss Walsh from her position. Based on all that happened during the trial below the jury was undecided whether there had been a breach of fiduciary duty.

The Respondents filed a post trial motion under Fed, R. of Civ. P. 50 arguing that under California law there is a duty of confidentiality that is greater than the duty to disclose. The trial court judge ruled in Respondent First American's favor based on the application of the California law. There are strict standards for setting aside a jury verdict under Rule 50. In ***Newton v Shell Oil Company***, 2000 US Dist. Lexis at 417 these standards were discussed as to when a jury verdict must fall or stand:
"While we sincerely question the appropriateness of the jury's verdict, the standard for granting a motion for judgment as a matter of law 'is appropriately strict'. ***Stubbs v Dudley***, 849 F2d 83, 85 (2d Cir 1988), cert. denied, 489 US 1034, 103 LED 2d 230, 109 S Ct. 1095 (1989). In order to grant such a motion the Court cannot consider the credibility of the witnesses or the weight of the evidence in the light most favorable to the non-moving party, the verdict was one that reasonable persons could not have reached. ***Simblest v Maynard***, 427 F2d 1, 4 (2d Cir. 1970). In considering a Rule 50 motion the District Court is required to 'consider the evidence in the light most favorable to the party against whom the motion was made and to give that party the benefit of all reasonable inferences that the jury may have drawn in his favor from the evidence. The court cannot assess the weight of conflicting evidence, pass on the credibility of the witnesses, or substitute its judgment for that of the jury'. ***Smith v Lightning Bolt Productions, Inc.***, 861 F.2d 367 (2d Cir. 1988) (internal citations and quotations omitted); see also ***Gibeau v Nellis*** 18 F2d 107, 109 (2d Cir 1994)(holding that to be entitled to a judgment notwithstanding the jury verdict, the moving party must

demonstrate that without weighting the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as the verdict thar reasonable persons could have reached); ***Vermont Plastics, Inc. v Brine, Inc.***, 79 F3d 272, 277 (2d Cir 1996) (holding that 'in considering the evidence, the trial court may not weight evidence, assess credibility, or substitute its opinion of the facts for that of the jury.') Only where there is such a complete absence of evidence supporting the verdict tha the jury's findings could have been the result of sheer surmise and conjecture, or . . . such an overwhelming amount of evidence in favor of the movant that reasonable and fair minded men could not arrive at a verdict' as it did, may the Court properly grant the motion. ***Song v. Ives Laboratories, Inc.***, 957 F2d 1041, (2d Cir. 1992) (internal citations and quotations omitted); see ***also Sir Speedy, Inc. v L&P Graphics, Inc.***, 957 F2d 1033, 1039 (2d Cir. 1992) Consequently, while we believe that this jury's verdict was incorrect, we are unable to grant the motion for judgment as a matter of law."

In the instant case, these standards were not only disregarded but directly abused. There was no overwhelming amount of evidence in favor of the movant, as evidenced by the hung jury on this issue. In Newton, supra the district court did not disturb the jury verdict even though, in the court's view, the verdict may have been against the weight of the evidence and simply wrong. Thus, in granting the post trial motion on breach of duty the trial court erred and thus violated the Petitioners' and the Richardsons' right to a fair and impartial jury trial.

Secondly, the escrow transactions in question all took place in Arizona with Arizona documents governing those escrow transactions. Those documents contain choice of law provisions prominently indicating that Arizona law would govern the escrow transactions. There is no conceivable conflict of laws analysis that could select California real estate law related to duty to disclose standards to be applicable to these Arizona transactions. The choice of law provisions in the documents select Arizona law as the governing law, the real estate was located in Arizona, the criminal misconduct took place in Arizona, the criminal trial took place in Arizona, the situs of the criminal misconduct and the situs

of the res was in Arizona. The trial court had no justification for applying California law to these transactions except to allow the Respondent First American Title Co. to escape liability by obtaining a judgment as a matter of law. As argued in Respondent's brief in the lower court, the California law allows a higher duty of confidentiality than a duty to disclose misconduct.

This is exactly the contrary in Arizona. In Arizona, unlike California, there is a clear duty of the escrow agent to disclose fraud, wrongdoing and misconduct related to the escrow transaction. See *Burkon v Ticor Title Ins. Co.* 165 Ariz. 299 (1989). This cases holds that an escrow contract creates a special relationship fitting the nature and character of an adhesion contract. The escrow agent breached both its fiduciary duty and the contract in failing to disclose misuse of funds. If the trial court had applied the right law there would have been a different result. Respondent Nancy Walsh (a then employee of Respondent First American) and Richard Romero (her then accomplice working outside of First American) were criminally convicted for their escrow violations in Tucson. In any event, application of the wrong law was outcome determinative. This was clear judicial area and requires reversal, remand and a new trial on this issue.

Petitioners submit that this usurping of the province of the jury by the trial court and the erroneous application of California law to Arizona real estate transactions, violated the Petitioners' and the Richardsons' right to a fair trial under the 7th Amendment and further violated the Petitioners' and the Richardsons' rights to due process under the 14th Amendment. Finally, the misapplication of the California law and failure to properly apply the Arizona law violated the rights of the Petitioners and the Richardsons to "equal protection of the law" based on the equal protection clause in the constitution.

H. The Failure of the Trial Court to Recognize, Investigate and Sanction the Attorney for offering the Bribes to Julianne Sanchez and Others Resulted in Constitutional Deprivation.

The filing of the cross-claim by Julianne Sanchez against the Richardsons during the trial was one of the more devastating illegal maneuvers made by the Respondents to derail the civil damages case. Julianne Sanchez started out as a co-plaintiff below sitting in on all strategy sessions and collecting information, documents, materials and evidence on the position of the plaintiff Richardsons and co-plaintiffs, below, who are the Petitioners herein. When Robert Werth offered the bribe, she was the only one to take it, but did not immediately disclose to the plaintiff Richardsons or the co-plaintiffs below (Petitioners herein) that she had agreed to file a cross-claim against the Richardsons, in order to assist the defendant below (and Respondent herein) First American. As indicated earlier this was brought to the attention of the trial court and was ignored. Further, Robert Werth had filed a cross-claim on behalf of other co-plaintiffs, the Underwoods and Chambers families, but they protested and had the cross-claims dismissed. See Appendix for Exhibits. The court failed to recognize acknowledge or investigate the Petitioners and the Richardsons' allegations of wrong doing by Attorney Robert Werth and ignored the bribe letter on law firm stationary that was submitted to the court. The trial court failed to recognize or investigate the solicitation of the co-plaintiffs to file a civil cross-claim against the Richardsons. The court further failed to recognize, acknowledge or investigate the solicitation made by Robert Werth from Respondent First American that encouraged co-plaintiffs to leave the litigation and file criminal charges against the Richardsons. None of them took the bribe and filed criminal charges against the Richardsons. Only Julieanne Sanchez took the bribe to file the bogus cross-claim.

The inaction of the trial court in addressing this misconduct and its failure to investigate this misconduct caused constitutional deprivation for the Petitioners and the Richardsons. This misconduct initiated the filing of the cross-claim in the first place. The federal district courts in action on this issue of solicitation and bribery (along with the failure to recognize the arbitration clause) allowed the filing of the bogus cross-claim which resulted in a constitutional deprivation for the Petitioners and the Richardsons. It denied them the right to a fair trial under the 7th Amendment. It

further resulted in a taking of their property without due process of law under the 14th Amendment.

I. The Bribe Taking and Other Misconduct of Julianne Sanchez Caused a Constitutional Deprivation for the Petitioners and Richardsons.

The misconduct of Julianne Sanchez during the trial below was as follows: in taking the bribe of the Attorney Robert Werth who was working on behalf of the Respondent First American; filing the illegal cross-claim on a transaction where she had already been paid; working with convicted felon, Peri Locklear, to steal information, materials, evidence and computer discs of the Petitioner Richardsons; and taking that stolen information and material to the Respondents First American and Nancy Walsh caused constitutional deprivation for the Petitioners and the Richardsons. This misconduct denied the Petitioners and the Richardsons their right to a fair trial under the 7th Amendment. It further resulted in a taking of their property without due process of law under the 14th Amendment.

CONCLUSION

The suit in California was to collect on the millions of dollars in damages that the Petitioners and the Richardsons, suffered from 1995 to 1997 after the criminal schemes of Nancy Walsh and Richard Romero in Tucson, Arizona. Walsh and Romero were convicted in an Arizona criminal court in 1998. At the time of their crimes Walsh was employed by First American Title Company while using Romero as an outside accomplice.

In the California civil suit in 1999 a series of factors prevented the Petitioners and the Richardsons from their rightful recovery (with a much lower burden of proof) than the successful criminal suit in Arizona. Those factors were: 1) the criminal conduct of Peri Locklear against the Richardsons, 2) the improperly imposed injunctions against the Richardsons and other non-parties, 3) a biased and prejudicial lower court, where the judge hid his connection to his former client, First American Title Company, 4) the unethical conduct of Attorney Robert Werth in

offering bribes to the co-Plaintiffs below, 5) the unethical bribe taking of the one co-Plaintiff, Julianne Sanchez, who became the single cross-claimant against the Richardsons, 6) the theft of information and evidence by Julianne Sanchez before she revealed that she would be a cross-claimant 7) the lower court's failure to enforce the arbitration clause to prevent the cross-claim, 8) the lower court's failure to apply Arizona law to the Arizona real estate transactions, 9) many and various other blatant judicial errors, and 10) the Ninth Circuit Appellate Court's failure to recognize extraordinary and compelling circumstances (especially in light of the need for the criminal trial transcript of Peri Locklear).

These factors combined to sabotage the Petitioners' and the Richardsons' case below and to place the Richardsons in bankruptcy. The 10 factors deprived the Petitioners and the Richardsons of some of their most basic and sacred constitutional rights: the right to a fair trial, the right to equal protection under the law, and the right to have property safe and secure, so that it is not taken without due process of law.

For all of these reasons, the Petitioners pray that this Honorable Court will grant this Writ of Certiorari as a companion Writ to ***Sammye Richardson v First American Title Company, et. al***. No. 035619.

On behalf of the Petitioners

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